UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GRAPHIC COMMUNICATIONS CONFERENCE/
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 137C (OFFSET PAPERBACK, MFRS., INC.)

Respondent,

and Case 04-CB-10663

BOBBIE JO STONIER, AN INDIVIDUAL

Charging Pary

David Faye, Esq., for the General Counsel.
Ira H. Weinstock, Esq., of Harrisburg, Pennsylvania,
for the Respondent.
Linda Dwoskin, Esq., (Dechert, LLP), of
Philadelphia, Pennsylvania, for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Wilkes-Barre, Pennsylvania, on February 6 and 28, 2012.[1] Bobbie Jo Stonier, an individual employed by Offset Paperback Mfrs., Inc. (the Company), filed the initial charge on May 20, 2011. In the amended complaint, filed November 18, 2011, the General Counsel alleges that Graphic Communications Conference/International Brotherhood of Teamsters, Local 137C (Offset Paperback) Mfrs., Inc. (the Union or Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by: (1) threatening an employee in late March 2011 that the Union would remove her from a class action grievance if the employee did not stop complaining about temporary employees; and (2) threatening employees in late April 2011 with intraunion discipline and discharge by the Company if they talked with other employees about union related matters. In its timely filed answer, the Union denied the material allegations.

The General Counsel moved to further amend the complaint to allege three additional Section 8(b)(1)(A) violations. In the first instance, counsel moved at trial to add an allegation that "[o]n or about April 25, 2011, at the Laflin plant, Respondent, by Michael Timek, threatened an employee that employees would face intraunion discipline by Respondent and discharge by

[1] Unless otherwise indicated, all dates refer to 2011.

the Employer if they talked with other employees about Union-related matters." As I stated at trial, that motion was untimely and prejudicial to the Union.[2] As argued by movant, allegations involving events occurring more than 6 months prior to the filing of the charge are considered timely if those allegations are "closely related" to the allegations made in a timely charge. *Seton Co.*, 332 NLRB 979, 982–983 (2000); *Nickles Bakery of Indiana*, 296 NLRB 927 (1989); *Redd-I, Inc.*, 290 NLRB 1115, 1116–1118 (1988). In this situation, the new allegations relate to the same type of violation allegedly committed on April 26, involve similar facts and would likely trigger a similar defensive posture by the Union. See *Raymond Interior Systems,* 357 NLRB No. 193 at 30 fn. 21 (2011); *Bruce Packing Co.,* 357 NLRB No. 93 at 2 (2011); cf. *Continental Auto Parts,* 357 NLRB No. 78 at 1, 4 (2011); *Salon/Spa at Boro, Inc.,* 356 NLRB No. 69 at 21–23 (2010).

On the other hand, such a delay raises a due process dilemma. See *New York Post Corp.*, 283 NLRB 430, 430–431 (1987). Under Section 102.17 of the Board's Rules and Regulations, an amendment may be granted "upon such terms as may be deemed just." In determining whether an amendment is "just," the Board has traditionally evaluated three factors: (1) whether there was surprise or lack of notice, (2) whether there is a valid excuse for the delay in moving to amend, and (3) whether the matter was fully litigated. *Cab Associates*, 340 NLRB 1391, 1397 (2003). Counsel waited until after two government witnesses testified and had been subjected to cross-examination before attempting to slip in testimony relating to another alleged unfair labor practice. During the pretrial conference, it was revealed that the Union's counsel would be actually engaged in another proceeding during the days following the designated trial date and would be unavailable for a period of time thereafter. I was assured by both counsel, however, that this was a 1 day case. As such, the consequences of the General Counsel's delay caused the Union to have less than a fair opportunity to prepare and present its defense as to the additional allegations. Under the circumstances, I reaffirm my ruling denying the General Counsel's motion to amend the complaint to allege that the Union unlawfully threatened an employee on April 25, 2011 that members would be disciplined and possibly discharged if they discussed union related matters with other employees.

The General Counsel also seeks to add the following allegations: (1) that Union Representative Griffith repeated to Boobie Jo Stonier, the charging party, and another employee, Vanessa Burkhardt, that Union President John Brown informed him in March 2011 that if Stonier did not stop complaining about temporary employees performing bargaining unit work he was going to drop her from the class action suit; and (2) that Union Representative Michael Timek told two employees, several days prior to April 26 that he did not want union members discussing union business without him, no one except he could give advice to union members, and warned that members who talked about union matters or the terms and conditions of employment of other members would be disciplined, including discharge.

Both allegations arose in the course of direct or redirect testimony elicited by counsel for the General Counsel, involve matters closely related to extant charges and the matters were fully litigated at the hearing as background evidence. *Redd-I, Inc.*, 290 NLRB 1115, 1115–1116 (1988); *Hi-Tech Cable Corp*., 318 NLRB 280 (1995). Under such circumstances, a motion to amend the complaint to assert these two additional 8(b)(1)(A) allegations would typically be

[2] I denied the motion based on the General Counsel's concession that he knowingly delayed proposing the amendment until after he called two witnesses and was presenting testimony by employee Daniel Pinkowsky. (Tr. 80, 84–86.) In any event, Pinkowski subsequently testified on rebuttal and I found him more credible than Timek. Timek told Pinkowsky on April 25 that he would threaten employees the following day with intraunion discipline and discharge if they continued to talk with each other about certain employees, instead of bringing all union related concerns to his attention. (Tr. 241, 256–266.)

granted in order to conform the pleadings to the proof. Once again, however, it would not be "just" to permit the late amendments. The parties rested and were directed to file posthearing briefs. In his brief, for the first time, counsel for the General Counsel raises the motion to amend and briefs the issue. He offers no explanation as to why he did not raise the motion before the record closed. As a result, there was no notice to union counsel that he would need to address such an issue in his brief. Since it is the longstanding practice of the Board's Division of Judges to prohibit reply briefs, the Union is prejudiced by its inability to oppose the government's motion and related legal arguments. The Board has denied similar postevidentiary amendments under similar circumstances. See *Stagehands Referral Service, LLC*, 347 NLRB 1167 (2006) (General Counsel's offer to allow respondent to put on more evidence did not cure the problem and the reasons for the delay were unacceptable); *Consolidated Printers*, 305 NLRB 1061, 1064 (1992) (delay not explained, delay was "of consequence" as respondent had presented its defense, and giving respondent time to submit further evidence would not cure the prejudice); *New York Post Corp.*, Id. (no explanation why counsel for the General Counsel waited until the last minute to add this allegation to the complaints). Moreover, findings with respect to these additional allegations would be cumulative and, given the conclusions of law herein, would not materially affect the remedy. *Teamsters Local No. 886*, 354 NLRB No. 52, slip op. at 4, fn. 3 (2009). Accordingly, I deny this motion to amend the complaint as well.

On the entire record, including my observation of the demeanor of the witnesses,[3] and after considering the briefs filed by the General Counsel and the Union, I make the following

FINDINGS OF FACT

I. Jurisdiction

The Company, a Pennsylvania corporation, is engaged in the printing and manufacturing of paperback books at its facilities located in Dallas and Laflin, Pennsylvania. During the past year, the Company purchased and received goods valued in excess of $50,000 directly from points outside Pennsylvania. At all material times, the Company has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Company's Operations

Employees at the Company's Laflin facility are assigned to one of three weekday shifts – a midnight shift (11 p.m. to 7 a.m.), a day shift (7a.m. to 3p.m.), and an afternoon shift (3 to 11 p.m.). As a term and condition of their employment, employees are required to adhere to a set of Rules and a Code of Conduct. The Rules handbook contains several provisions dealing with employee misconduct, the violation of which "will result in appropriate disciplinary action up to and including termination." The pertinent rules include:

> 7. Threatening, intimidating, coercing or interfering with employees or supervision at any time.
>
> 15. Making or publishing of false, vicious or malicious statements concerning any employee, supervisor, the company or its products.

[3] The General Counsel's unopposed motion to correct the transcript, dated April 17, 2012, is granted and received in evidence as GC Exh. 8.

24. Wasting time or loitering in restrooms or anywhere on the company premises during work hours.[4]

The pertinent provisions in the Code of Conduct handbook include two sections dealing with employee interaction:

> 2.1 Mutual trust & respect—We treat each other in a mutually respectful and trusting manner at work and seek to create a workplace environment that does not allow for discrimination, harassment, bullying or intimidation . . . Harrassment, bullying or intimidation occurs when there is verbal or physical conduct that denigrates or shows disrespect toward an individual based on one or more of the aforementioned characteristics with the purpose or effect of unreasonably interfering with the individual's work performance or creating a coercive, hostile or offensive workplace.
>
> 2.2 We encourage our employees to speak up freely and without fear of retaliation. We do not retaliate against employees who raise good-faith workplace concerns.[5]

III. The Union

At all material times, the Union has been the exclusive collective-bargaining representative of 475 members employed by the Company (the bargaining unit):

> All production, maintenance (including parts warehouse), quality service and warehouse employees at its Dallas and Laflin plants, and excluding all office, clerical, watchmen and supervisors as defined in the Act.

The Company and Union have maintained and enforced a collective-bargaining agreement effective by its terms from November 1, 1993, through October 31, 2008, and by its terms self renewing thereafter, covering conditions of the employment of the Unit and containing, among other provisions, a grievance and arbitration procedure.

John Brown is president of the Union; He oversees the various chapel chairpersons responsible for administering the Union's business within the Company's individual departments. The chapel chairman's duties include assisting employees with any union business or work related issues, answering their questions and representing them in dealing with the Company.[6]

Michael Timik, a printer assistant at the Laflin plant, is the chapel chairperson for the Digital Print Services Department (prep department) at that location.[7] Scott Griffith, a prep department employee at the Dallas facility, serves as that department's chapel chairperson. Griffith ran against Brown in the most recent union election held in November 2011. Brown won, but Griffin protested the election and an investigation is pending. In the same election, Stonier, the charging party, ran for Recording Secretary against Janine Daily. She also lost and has

[4] R. Exh. 1, pp. 73–75.

[5] Id. at pp. 1–3.

[6] A chapel chairperson performs a role similar to that of a union shop steward. (Tr. 32, 89, 152, 218, 248.)

[7] The Union concedes that Brown and Timik served as agents of the Union pursuant to Sec. 2(13).

challenged the election results. On January 2, 2012, less than 2 months later, Stonier ran against Timek when he sought re-election as chapel chairman. She lost again.[8]

IV. Stonier's Grievances

Stonier has been employed by the Company in several capacities at both of its facilities since 2000. She is currently employed as a cut sheet operator on the Laflin facility bindery department's afternoon shift. Burkhardt, also a union member and Stonier's friend, is employed as an assistant in the Laflin facility prep department's morning shift.

Stonier's relationship with the Company has been a rocky one over the past few years. While at the Dallas facility on January 27, 2011, Stonier and several other employees were temporarily reassigned from the prep department to the bindery. Stonier responded to her reassignment by filing Grievance No. 11291 on January 31.[9] On or about that date, coworker Ronald Coleman filed Grievance No. 11292.[10] Twenty more affected prep department employees followed by jointly filing Grievance No. 11293, labeled a "Class Act Grievance," on February 5 (the February class action), charging a breach of a 2007 agreement relating to procedures for layoffs in the press department.[11]

Stonier's January 31 grievance was not specifically included in the February class action.[12] Subsequently, however, the Union sent mixed signals as to whether her January 31 grievance would be pursued in conjunction with the February class action. On several occasions, Brown told Stonier that her grievance was separate from the February class action. On other occasions, he mentioned that she was part of the February class action.[13] Counsel for the Union, however, treated Stonier's January 31 grievance as if it were consolidated with the February class action. His letter to the American Arbitration Association, dated January 21, states, in pertinent part:

> Re: Graphic Communications International Union, Local 13-C
> and Offset Paperback Mfgr., Inc.
> Grievance: Class Action (#11293/Class Action, #11289/Ian

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[8] The January 2011 elections revealed a Union divide between Brown and Timik as incumbents, and Griffith and Stonier as the challenging slate. (Tr. 27, 72–74. 89–90, 94, 136, 159, 186–187, 198, 216–217, 221–222, 225.)

[9] R. Exh. 4.

[10] There is no indication in the record as to the date that Coleman's grievance was filed but, given the numerical designations of the grievance forms, it is likely that it was filed prior to the filing of Grievance No. 11293 on February 5. (Tr. 116.)

[11] Stonier conceded that there were distinctions between her individual grievance and the allegations in the grievances subsumed within the February class action. (Tr. 188; R. Exh. 2.)

[12] It is undisputed that Stonier was not among the names on the list attached to Grievance No. 11293. (Tr. 91, 95–101, 109–110, 121, 132–133, 162–164, 170–173, 188–189, 224, 226–227, 230–231; R. Exh. 2.) Stonier was one of 4 employees who were part of Grievance No. 11443, which was labeled a "Class Action." That grievance, however, was filed on May 10, 2011, and is irrelevant to this case. (R. Exh. 3; Tr. 163.)

[13] I credit Stonier's testimony that Brown sent mixed signals at various times as to whether her grievance was connected to a "class action" of grievances. (Tr. 138, 163–167, 169–171.) Brown, who was present in court for Stonier's testimony, provided the briefest of responses regarding his conversation with Stonier about temporary workers in March. He had little recollection as to dates and did not refute Stonier's contention as to the mixed signals that he sent her as to whether she was or was not a part of a class action grievance. (Tr. 223–227.)

Henry,#11320/Ian Henry,#11272/Joshua Dickinson,#11292/
Ronald Coleman,#11291/Bobbie Jo Stonier, Pre Press

Dear Sir/Madam:

Please be advised that a dispute exists between the above parties involving an issue regarding the above grievance. Please send a panel of arbitrators to the understanding as attorney for the Union. . .[14]

V. Alleged Threats During the March Telephone Conversations

Sometime in March 2011, Stonier and Burkhardt complained to Griffith that two temporary employees, Gina Owens and Nick Alterez, were performing bargaining unit work in the prep department. Griffith responded by calling Brown to share those concerns with him. Gina Owens worked on Stonier's afternoon shift, and Nick Alterez worked on the midnight shift. Brown told Griffith, "You've got to stop listening to the chickens in the hen house." Brown responded that if Stonier "did not stop complaining, he was "going to drop her from the class action [grievance]." Griffin insisted that Brown could not do that and urged Brown to "get Timick on board [so] that our people get to run those machines, not the temp." Brown, however, went on to criticize Stonier for focusing on temporary employees instead of prep department employees being laid off or transferred to much lower positions.[15]

Shortly thereafter, on March 31, Stonier called Brown and asked about the status of the January 31 grievance. He replied that he was going to remove her from the "class action suit" if she continued to complain about temporary employees working in the prep department. She insisted that he could not do that and asked why he was allowing a temporary employee to be in the prep department when 6 employees were displaced from their positions. Brown said he would check with Timek and call her back. A short while later, Brown called Stonier and told her that Timek continued to deny that there were any temporary employees in the prep department. Stonier disagreed, noting that she saw temporary employees working there at night. Once again, he threatened to "drop" her January 31 grievance from the February class action if she did not drop the subject. Stonier hung up the telephone.[16]

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[14] R. Exh. 5.

[15] Brown did not rebut Griffin's credible testimony regarding their March telephone conversation. (Tr. 92–95, 102–105.) Moreover, Timek contradicted Brown's testimony on the issue of the temporary employees. Brown testified that Timek told him that there were no temporary employees in the prep department in March 2011. (Tr. 224.) Timek, however, testified that Owens and Alterez were, indeed, temporary employees in that department during that period of time. (Tr. 208–209.)

[16] I found Stonier more credible than Brown regarding their telephone conversations on March 31. Although combative at certain points, she provided extensive testimony regarding her conversations with Brown that day. Moreover, her conversation is consistent with credible Griffin's testimony regarding his earlier conversation with Brown, which Brown did not deny. (Tr. 92–95, 102–105.) At first, it seemed like she was providing contradictory testimony as to whether she or Brown initiated the call. (Tr. 125–126, 134–136, 169, 174–180.) However, Brown clarified during his relatively brief testimony that Stonier called him first and he called her back after speaking with Timek. (Tr. 223–225.) In any event, I did not attribute any weight to Stonier's testimony regarding her call to Griffin immediately after her discussion with Brown. (Tr. 136–139, 179–180.) Such hearsay testimony, which was not corroborated by Griffin's earlier testimony, merely serves to bolster Stonier's contention that Brown threatened to sever her grievance from the February class action.

Notwithstanding Brown's threats, Stonier's January 31 grievance, together with the February class action and three other individual grievances, went to arbitration on August 10, 2011. Stonier testified in support of the Union regarding the common issue in all of the grievances—the Employer's alleged displacement of employees from the Laflin prep department. The proceeding was not completed, however, and was adjourned to March 1, 2012.[17]

VI. Timek Admonishes Burkhardt and Pinkowsky

In addition to her pending grievances, Stonier, along with Burkhardt, began complaining to Brown and Timik in or around March 2010 that a coworker, Ryan Sullivan, was getting special treatment. Sullivan, a former supervisor and union member whose parents were, until recently, officials with the Union's parent organization, is an equipment operator at the Laflin plant. Stonier and Burkhardt were especially annoyed that he was permitted to work hours that were different from others on the day shift.[18]

Sometime in April, Burkhardt called Brown to complain that Timek was not effectively pursuing members' grievances. One such grievance was a wage classification issue involving David Pinkowsky, also a bindery assistant on the day shift. Shortly thereafter, Brown informed Timek about Burkhardt's complaints. Timek responded by summoning Burkhardt and Pinkowsky into a meeting in Smith's office. He admonished Pinkowsky for discussing his issue with Burkhardt and then chastised her for bypassing him and complaining to Brown about specific grievances. He also admonished Burkhardt for talking to other employees about union related matters. Pinkowsky explained that Burkhardt had been with the Company a long time and he was merely asking for advice. Timek replied that Burkhardt should not be discussing union related matters with other employees; that was his job. He asked Burkhardt if she would like to take over his position as chapel chairman. Burkhardt rejected that overture and responded that she simply wanted Timek to perform his responsibilities. She added that she would continue helping any coworkers who sought her advice. Timek reiterated that workers needed to refrain from discussing union related matters and warned that they would be disciplined if they continuing doing so. He added that Sullivan's work schedule was none of their business and warned that employees could be disciplined and possibly discharged for speaking about it.[19]

Nearing the end of his shift on April 25, 2011, Pinkowsky saw Timek putting together a box. He asked him what was going on. Timek explained that he was preparing for a meeting the next day to have employees vote as to whether they wanted him to resign or remain chapel chairperson. After Pinkowsky told Timek that he would be absent from work the next day, Timek

[17] Griffin conceded that Stonier's January 31 grievance was not subsumed within a class action grievance. (Tr. 99–101.) Nevertheless, the undisputed testimony established that all of the grievances related to the same allegedly adverse action of January 27, and were essentially consolidated. They were heard before the same arbitrator and on the same day. (Tr. 95, 106–108, 127–130, 227–230; R. Exh. 5.)

[18] There is no evidence indicating that anyone other than Stonier and Burkhardt complained about Sullivan. (Tr. 153–154, 225–226, 251.)

[19] There is no dispute that Timek called Burkhardt and, subsequently, Pinkowsky, to a meeting in Smith's office. Nor is it disputed that Timek was concerned that Pinkowsky was seeking advice from Burkhardt instead of him as the chapel chairperson. Timek expressed that sentiment and told them that any concerns over wages or any other problems were to be addressed to him. (Tr. 22, 27–28, 32–34, 36–39, 41–46, 52, 73, 76, 153, 203, 208, 210, 245–249, 269.) However, I did not credit Timek's testimony that Burkhardt told him that bargaining unit members recently took a vote regarding his leadership since I find it incredible that she would have mentioned that and then refuse to divulge the results. (Tr. 205–207, 269–270, 328).

briefed him about the purpose of the meeting. Timek said he was going to provide attendees with copies of their union oath and remind them of their obligation to report any or all problems concerning the Union or other employees to him. He stated that according to their union oath, employees were prohibited from talking about other employees or reporting misconduct by other employees. As a case in point, Timek explained that he was going to inform employees that Sullivan was threatening to pursue harassment charges against coworkers who were complaining about him. Timek said that members, rather than discuss issues with each other, needed to bring any union related problems to his attention. He added that, in this instance, employees could lose their jobs if they continued talking about Sullivan and the latter decided to file harassment charges against them. Since Pinkowsky was not going to attend the meeting the next day, Timek told him to cast his vote now. Pinkowsky complied.[20]

VII. The April 26 Meetings

On April 26, Timek met with the Laflin facility's morning shift in the Company cafeteria shortly after 7 a.m. Smith, the foreman, required his employees, including Burkhardt, Robert Lee Shupp, and David Kuckucka to attend. The meeting was attended by approximately 20 employees. Timek started the meeting by handing out the Company Rules. Rule 15, which was highlighted, related to the "[m]aking or publishing of false, vicious or malicious statements concerning any employee."[21]

Timek said that the purpose of the meeting was to discuss harassment among the employees. He warned that employees could be disciplined by the Company, including discharge, for making false statements about other employees. Realizing that Timek was referring to complaints by some about the starting time of Sullivan, who was also present at the meeting, Burkhardt asked "[w]hy he gets to do this and nobody else can?" Timek responded that Sullivan could press harassment charges against anyone who persisted in complaining about his work schedule and that could result in discipline. He charged that certain people were trying to do his job and that, if any employees had a problem, they needed to contact him, rather than complaining to Company management. Timek added that he was the only employee in the facility who could discuss union business on Company time. Before concluding the meeting, Timek explained that some members had expressed dissatisfaction with his performance as chapel chairperson, so he wanted them to vote whether he should remain on the job. Burkhardt protested that this was an inappropriate procedure and she was not going to participate in the vote. She added that she previously spoke to Brown about it, and he agreed that such a vote would be inappropriate and would not take place. Timek disregarded Burkhardt's protest,

[20] Pinkowsky's initial testimony sought to corroborate testimony by Burkardt and Shupp regarding Timek's statements the next day. However, it soon became evident that the General Counsel was actually proffering such testimony in an attempt to establish grounds for a belated motion to amend the complaint to assert an additional Section 8(a)(1) charge. Accordingly, I precluded Pinkowsky's testimony at that point as late and prejudicial. (Tr. 76–78.) However, I permitted it on rebuttal after Timek testified that he asked Pinkowsky to cast an advance vote. (Tr. 219–220, 234–236, 241–245.) Timek, in turn, denied that allegation on rebuttal. (Tr. 249–255.) In any event, I found the spontaneity, detail, and mixed nature of Pinkowsky's testimony more credible than the elusive testimony of Timik, who repeatedly went beyond the scope of the question on cross-examination.

[21] The portions of the rule that were highlighted on the handouts are not disputed. (Tr. 40–41, 46–48; GC Exh. 4; R. Exh. 1.)

proceeded to hand out slips of paper, instructed members to write "yes" or "no" on their slips and insert them into a box. Timek designated Shupp and Kukucka as vote counters.[22]

Timek's meeting with 10–14 afternoon shift employees began shortly after 3 p.m. in the Company cafeteria. Union members in attendance included Stonier and Austin Knight. Timek again provided the employees with copies of the Code of Conduct and union oath that employees signed when they joined the Union. Timek mentioned a few highlighted items from the Code of Conduct, including Rule 15, which stated that an employee could be disciplined for making false statements about another employee.[23] In contrast to the previous shift meeting, however, only Timek spoke at the afternoon meeting. He told the attendees that they could not harass, intimidate, coerce, talk about or call other employees names, and they could be fired for intimidating or harassing other employees. Timek also stated that members were not to speak at any time with temporary employees about union business, as they were not union members. A violation of that decree, he warned, would be met with discipline by the Company. He also warned that union members would encounter a similar fate if they spoke with each other about union business, such as grievances and wage discrepancies, since he was the only one authorized to handle such matters. Timek concluded that meeting as well by mentioning that some employees were not satisfied with his performance as chapel chairperson and, therefore, he was asking them to vote whether he should remain as chapel chairperson or resign that position.[24] The final vote tally for the 3 shifts was 33 in favor of retaining Timek and 3 opposed.[25]

Legal Analysis

I. The March 31 Threats

The Acting General Counsel alleges that Brown, the Union's president, violated Section 8(b)(1)(A) by threatening to remove Stonier's January 31 grievance from the February class action grievance if she did not stop complaining about issues at the Laflin facility, including temporary employees performing bargaining unit work in the prep department. The Union contends that Brown simply responded to Stonier's inquiry about temporary employees and was

[22] While Burhardt and Shupp paraphrased much of what Timek said at their shift meeting and were assisted by several leading questions, their versions were more credible than the one offered by Timek. (Tr. 19–26, 28, 30–38, 46–47, 51–59, 70–71.) Timek testified that he made the same brief presentation to each shift: that he heard there was some conflict, which he did not specify, between employees and handed out the Code of Conduct in order to prevent employees from being disciplined by the Company. (Tr. 199, 203, 214–215.) When asked, however, whether he threatened employees with intraunion discipline, he appeared evasive, responding that he "addressed the whole union body," not "any individual." (Tr. 203–204.) Moreover, when asked whether he told attendees that "union business should go through [him]," he initially denied it, but then proceeded to explain that "as chapel chairperson, my responsibility is to handle any kind of problems that may arise or if anybody has any questions about the union." (Tr. 217–218.)

[23] GC Exh. 4.

[24] As previously discussed, I found Timek's brief and generalized versions of his shift meeting presentations less credible than those provided by the attendees called by the General Counsel. (Tr. 199, 214–215.) Stonier and Knight provided fairly consistent and detailed testimony regarding Timek's concern over union members' discussions with temporary employees, as well as with other union members. Their testimony was corroborated by Brown's concession that Stonier called him in March to complain about temporary employees. Brown followed-up by contacting Timek, who denied the existence of such employees. (Tr. 214.) At trial, however, Timek conceded that two temporary employees had been employed in his department around the time of Stonier's complaints. (Tr. 62–74, 148–152, 181–185, 198–204.)

[25] I base this finding on Timek's specific recollection of the vote results, which the other witnesses estimated to be within that range. (Tr. 203.)

not even aware that she was involved in a class action. In the alternative, the Union asserts that it avoided liability for Brown's threats because his conduct was effectively repudiated by the Union's eventual pursuit of Stonier's grievance through arbitration.

It is well established that a union violates Section 8(b)(1)(A) when it resorts to threats or other forms of restraint and coercion in order to restrict the right of an employee-member to file grievances or raise complaints about working conditions. See *Warehouse Employees Local 20408 (Dubovsky & Sons)*, 296 NLRB 396, 403 (1989); *McLean Trucking Co.,* 257 NLRB 1349, 1354–1355 (1981); *Local 14997, United Steelworkers of America (LaPorte Plastics Corp.)*, 244 NLRB 492 (1979)); *Peninsula Shipbuilders' Association (Newport News Shipbuilding*), 237 NLRB 1501 (1978).

In this instance, Brown's threat was directly aimed at stifling Stonier's complaints regarding the diversion of bargaining unit work to temporary employees. Such complaints clearly constituted protected concerted conduct. The Union's overreliance on a nuance—that Stonier was not a signatory to the February class action grievance—is a poorly veiled attempt to evade the fact that her individual grievance was essentially consolidated with the class action grievance and several other individual grievances for arbitration on August 10. Notwithstanding Stonier's concession that Brown gave her conflicting indications at various times as to whether her January 31 grievance was or was not part of a class action, the weight of the credible evidence revealed that Brown threatened to "drop" or "remove" Stonier's January 31 grievance from the February class action and other grievances which were scheduled to be heard by an arbitrator on August 10. That statement reasonably indicated to Stonier that, at the very least, the adjudication of her individual grievance would be separated from the others and delayed beyond the scheduled arbitration date of August 10.

It is well settled that, under certain circumstances, a respondent may relieve himself of liability for coercive conduct by repudiating it. To be effective, however, a lawful repudiation must be timely, unambiguous, specific as to the nature of the coercive conduct; adequately communicated to the employees involved, free from other illegal conduct, and accompanied by assurances that the respondent will not interfere with employees' Section 7 rights in the future. *Passavant Memorial Area Hospital*, 237 NLRB 138, 138–139 (1978), citing *Douglas Division, The Scott & Fetzer Co.,* 228 NLRB 1016 (1977). The Union did, in spite of Brown's threat, pursue Stonier's January 31 grievance to arbitration on August 10. It did not, however, come close to repudiating Brown's coercive threats by communicating to Stonier that she was free to complain about temporary employees without fear of prejudicing her individual grievance. Thus, while Stonier's grievance may have gone to arbitration, the Union did nothing to remove the coercive cloud that remained with respect to her right to complain about temporary employees performing bargaining unit work.

Based on the foregoing, Brown's threat on March 31 to delay the processing of Stonier's grievance in order to restrain her from exercising her Section 7 rights constituted a violation of Section 8(b)(1)(A). *Graphic Arts International Union 96 B*, 235 NLRB 1153 (1978); *Teamsters, Local Union No. 279,* 218 NLRB 1392 (1975); *Service Employees International Union, Local 50, AFL–CIO (Aetna Window Cleaning Co.)*, 204 NLRB 696, 698 (1973).

II. The April 26 Threats

The Acting General Counsel also alleges that Timek violated Section 8(b)(1)(A) on May 25 when he met with day-shift employees, provided them with copies of the union rules and the

Company's code of conduct, and warned them not to discuss union business with each other on Company time or else they would face discipline, including possible discharge, for harassment. Similarly, Timek met later that day with employees on the afternoon shift and conveyed essentially the same warnings—to refrain from harassing, intimidating, coercing or talking about other employees. He also prohibited them from speaking with temporary employees about any union related matters and reiterated that he was the only one that was authorized to handle any such issues.

The test for determining whether Section 8(b)(1)(A) has been violated is an objective one that does not turn on evidence that the particular employee was actually restrained or coerced by a union agent's statement but, rather, on whether the statement would have a reasonable tendency to restrain or coerce employees in the exercise of their statutory rights. *Letter Carriers Branch 3126 (Postal Service)*, 330 NLRB 587, 587–588 (2000); *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979).

On April 26, 2011, Timek met with each of the 3 prep department shifts and prohibited employee-members from: discussing union business, including grievances and wage discrepancies on Company time with anyone except for him; complaining about the terms and conditions of employment, including work schedules, of other employees; complaining about temporary employees performing bargaining unit work; and harassing other employees . He warned that anyone who violated those directives would be disciplined and possibly discharged. He concluded the meetings with a show of strength by directing employee-members to participate in an impromptu vote as to whether he should remain or resign as chapel chairperson. While the voting tactic is not alleged to have violated any law or union rules, it could be reasonably seen as buttressing his strong arm tactics at each of the meetings, including the coercive statements.

All of the activities prohibited by Timek on April 26 constituted protected concerted activities protected under Section 7 of the Act. Aside from Timek's vague contention that he was simply attempting to quell conflicts among employees in the prep department, there was no credible evidence that this was actually happening. There was no evidence of concern, much less a verbal or written complaint, hinting at such conflict by management, Sullivan or any of the temporary employees. Nor was there any credible evidence in the form of a written Company rule that employee-members were not to discuss union related matters while working. The only credible evidence of adversity was that Burkhardt and Stonier were complaining to Brown about Sullivan's special schedule and temporary employees performing bargaining unit work.[26]

Under the circumstances, Timek's remarks to employee-members on April 26, which could reasonably have been interpreted as a threat if they engaged in Section 7 activities, violated Section 8(b)(1)(A). *In re International Brotherhood of Teamsters, Local 391*, 357 NLRB No. 187, slip op. at 1, fn. 5 (2012), citing *Battle Creek Health System*, 341 NLRB 882, 894 (2004), and *Smithers Tire*, 308 NLRB 72 (1992). See also *International Brotherhood of Teamsters, Local No. 507*, 306 NLRB 118, 141 (1992).

[26] Also lurking in the background was a potential inference that Sullivan, whose parents were present or former high-level officials with the Union's parent organization, was being afforded special treatment by Brown and Timek. There was, however, no credible evidence to support such a finding.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union engaged in unfair labor practices by: (1) threatening an employee of the Company in March 2011 that the Union would remove the employee from a class action grievance if the employee did not stop raising complaints about temporary workers performing bargaining unit work at the Company's Laflin, Pennsylvania facility; and (2) threatening employees on April 26, 2011, with intraunion discipline by the Union and discharge by the Company if they discussed union related matters with other employees.

4. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[27]

ORDER

The Respondent, Graphic Communications Conference/International Brotherhood of Teamsters, Local 137C (Offset Paperback) Mfrs., Inc., Shavertown, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees that it would (1) fail or refuse to process a grievance of any employee who complains about temporary workers performing bargaining unit work, and (2) discipline, and the Company would discharge, any employee who discusses union related matters with other employees.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[27] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its union office in Shavertown, Pennsylvania copies of the attached notice marked "Appendix."[28] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 4 a sufficient amount of signed copies of the notice for physical and/or electronic posting by Offset Paperback Mfrs., Inc., if willing, at all places or in the same manner as notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 17, 2012

Michael A. Rosas
Administrative Law Judge

[28] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten any employee-member that we will fail or refuse to process his or her grievance for complaining about temporary workers performing bargaining unit.

WE WILL NOT threaten any employee-member with intra-union discipline and/or discharge by the Company for discussing union related matters with other employees.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

GRAPHIC COMMUNICATIONS CONFERENCE/
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 137C (OFFSET
PAPERBACK, MFRS., INC.)

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.